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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BLAKE RYAN GILHOUSEN,

Defendant and Appellant.

G056922

(Super. Ct. No. 18WF0656)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael J. Cassidy, Judge. Affirmed.

James M. Kehoe, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

INTRODUCTION

We appointed counsel to represent defendant Blake Ryan Gilhousen on appeal. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), setting forth the facts of the case, raising no issues, and requesting that we independently review the entire record. We provided defendant 30 days to file written argument on his own behalf; no supplemental response has been received.

We have examined the entire record and appointed counsel's *Wende/Anders* brief; we find no reasonably arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

BACKGROUND

On March 18, 2018, at about 7:30 a.m., police officers conducting a lawful search found defendant asleep in his bedroom. The officers located a box on a bookshelf next to defendant's bed. In the box, the officers found:

1. one Ziploc baggie containing 23.097 grams of methamphetamine;
2. one Ziploc baggie containing 1.86 grams of methamphetamine;
3. one Ziploc baggie containing 848 milligrams of heroin;
4. six syringes or hypodermic needles containing a clear liquid the officers believed was methamphetamine;
5. a spoon with burnt residue on it, indicating it had been used to liquefy controlled substances;
6. cotton swabs, which can be used in injecting controlled substances;
7. an eight milligram packet of Suboxone, a medication prescribed to help people get off of methamphetamine;
8. a sheet of paper with handwritten numbers consistent with credit card or debit card numbers; and

9. many credit or debit cards, identification cards, gift cards, a bank card, membership cards, Costco cash cards, and checks for accounts in the name of persons other than defendant.¹

Elsewhere in his bedroom, the officers found defendant's wallet, which contained his identification and a check made out to defendant on the account of the First Church of Christ, Scientist, and a keychain with what appeared to be a canister of tear gas. Defendant admitted the keys were his and admitted he knew that as a convicted felon he was not permitted to be in possession of tear gas. Defendant initially told the officers he did not know what was in the canister, and later stated he thought the canister was a flashlight.

The officers did not find a scale, empty baggies, pay/owe sheets, a ledger, or cash in large denominations or large amounts in defendant's room. The officers did not hear defendant's cell phone ring while they were searching the residence.

A police officer testifying as an expert witness in controlled substances opined that the quantity of the controlled substances found in defendant's residence caused him to believe they were possessed for sale, but that the presence of syringes, the spoon, and cotton swabs caused him to believe that some of the controlled substances were possessed for personal use. The street value of the methamphetamine would be about \$300, and the street value of the heroin would be about \$700 or \$800.

The president of the First Church of Christ, Scientist testified blank checks had been stolen from the church in February 2018. The check found in defendant's wallet and made out to defendant was signed with the president's name, but it was not her signature. The president did not know defendant, and he did not have permission to possess the check or sign her name to it.

¹ The box also contained a Ziploc baggie containing 3.793 grams of a substance that was visually consistent with heroin. The crime laboratory, however, was unable to confirm the presence of a controlled substance.

Three individuals testified their cars were broken into in March 2018, and wallets and personal financial information were stolen. Their cards and checks were among those found in the box in defendant's bedroom. These individuals testified they did not know defendant and had not given him permission to have their personal items.

A jury found defendant guilty of possession of a controlled substance, heroin (Health & Saf. Code § 11350) (count 1); possession for sale of a controlled substance, methamphetamine (*id.*, § 11378) (count 2); possession of a completed check with intent to defraud (Pen. Code, § 475, subd. (c)) (count 3); three counts of identity theft with intent to defraud (*id.*, § 530.5, subd. (c)(1)) (counts 4, 6 & 7); receiving stolen property (*id.*, § 496, subd. (a) (count 5)); possession of controlled substance paraphernalia (Health & Saf. Code, § 11364, subd. (a)) (count 8); and possession of tear gas by a prohibited person (Pen. Code, § 22810, subd. (a)) (count 9).

In a bifurcated bench trial, the court found true the allegations that defendant had served two prior felony prison terms within the meaning of Penal Code section 667.5, subdivision (b).

At the sentencing hearing, the trial court struck one of the prison priors. The court then imposed a four year eight month sentence on defendant: the upper term of three years on count 2, eight months on count 3, and one year for the remaining prison prior. The court stayed imposition of sentence on the remaining counts, imposed fines and fees, made other orders, and awarded 418 days of credit for time served.

ANALYSIS OF POTENTIAL ISSUES

In considering the sufficiency of the evidence to support defendant's conviction, we examine "the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Thomas* (1992) 2 Cal.4th 489, 514.) We view the evidence in the light most favorable to the judgment and

presume in support of the judgment the existence of every fact the trier of fact reasonably could deduce from the evidence. (*People v. Barnes* (1986) 42 Cal.3d 284, 303.) The jury, not the appellate court, must be convinced of guilt beyond a reasonable doubt; for us, “[t]he test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432.) As set forth *ante*, there was substantial evidence supporting each of the charges against defendant.

The jury instructions were complete and legally correct.

The trial court did not err in admitting a redacted copy of the felony complaint and guilty plea form for defendant’s prior felony conviction. This exhibit was relevant to count 9, possession of tear gas by a prohibited person. (*People v. Waidla* (2000) 22 Cal.4th 690, 717 [admission of evidence at trial subject to review for abuse of discretion].)

During deliberations, the jury sent a written request reading, in relevant part: “Please clarify ‘tear gas weapon.’” Over defense counsel’s objection, the trial court sent the following response to the jury: “The penal code defines ‘Tear Gas’ as ‘any liquid, gaseous or solid substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air’ (Penal Code § 17240). [¶] A ‘Tear Gas Weapon’ is defined as ‘Any shell, cartridge or bomb capable of being discharged or exploded, when the discharge or explosion will cause or permit the release or emission of tear gas.’ (Penal Code § 17250(a)).” The trial court did not err by providing the jury with the statutory definitions of tear gas and tear gas weapon.

During deliberations, the jury advised the court that it was hung on counts 1 and 2. Without objection, the court instructed the jury with CALCRIM No. 3551 pertaining to continued deliberations. The elements of this instruction have been approved. (*People v. Moore* (2002) 96 Cal.App.4th 1105, 1118, 1121-1122.) Further, the court is vested with discretion to determine whether there is a reasonable probability

of the jury being able to reach an agreement. (Pen. Code, § 1140; *People v. Moore*, *supra*, at pp. 1121-1122.) The court did not err.

The sentence imposed on defendant—four years eight months—was within the range of sentencing options. The abstract of judgment and the minute order correctly reflect the trial court’s oral pronouncement of judgment. No improper fees or fines were imposed.

Our review of the record pursuant to *Wende*, *supra*, 25 Cal.3d 436, and *Anders*, *supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Competent counsel has represented defendant in this appeal.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

GOETHALS, J.